

# EXHIBIT C

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
AT HUNTINGTON

JONATHAN ADAMS, AS  
ADMINISTRATOR OF THE  
ESTATE OF GARY C. ADAMS,

Plaintiff,

vs.

CIVIL ACTION NO: 3:10-CV-00605

MARATHON PETROLEUM CO., LLC.,  
MARATHON OIL COMPANY,  
JOHN DOE AND JOHN DOE  
CORPORATION, an unknown  
individual and corporation,

Defendants.

\* \* \* \* \*

The deposition of JOSEPH DEAN SMITH was taken on  
October 14, 2010, commencing at 11:45 a.m., at the Law  
Offices of Nelson Mullins, 949 Third Avenue, Suite 200,  
Huntington, West Virginia, before Alex Koutsunis, a Court  
Reporter and Notary Public in and for the State of West  
Virginia, pursuant to notice in the above-styled matter  
which is now pending and undetermined in said Court.

ALEX KOUTSUNIS  
AAA COURT REPORTING SERVICE  
401 11th Street, Suite 504 -- P. O. Box 2043  
Huntington, WV 25701 -- (304) 523-4300

Joseph Smith

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1 us, up above the fleet where we were standing. And we  
2 were on our way back whenever Buddy hollered and said  
3 the barge was done.

4 Q Who hollered?

5 A Buddy.

6 Q Okay. Had you checked all of the barges?

7 A No, we still had one or two left.

8 Q Okay. And so what did -- Buddy said the  
9 barge was ready, and so that meant that you-all were  
10 going to go get it?

11 A Yes.

12 Q Where were you going?

13 A Down to the loading dock.

14 Q How far was that?

15 A Two hundred yards.

16 Q So it basically involved turning the boat  
17 around in the river, going down, probably turning the  
18 boat around again, hooking it to the barge, and bringing  
19 it up?

20 A It depends on where it was sitting on the  
21 loading dock.

22 Q Okay. So he says, "We are going to go get  
23 the barge." What did you-all do?

Joseph Smith

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1           A     After he gets it off I say, "All gone".

2           Q     You say, "All gone"?

3           A     Yes.

4           Q     So he doesn't make that announcement?

5           A     No.

6           Q     And you are saying that to the pilot or to  
7 everybody?

8           A     To everybody.

9           Q     And then what happens -- or what did  
10 happen?

11          A     At that time, me and Justin went to the  
12 head of the boat there and that's when Gary hollered  
13 over the radio, "There's still a wire on the stern of  
14 the boat."

15          Q     Okay. Now, why did you-all go to the front  
16 of the boat?

17          A     No, we were standing by waiting to -- when  
18 we got down to the other barge, to face up.

19          Q     Okay. And you do that from the front?

20          A     Yes.

21          Q     I guess you use the tow head on the --

22          A     We had to use the same line that we had  
23 tied off on the side of the barge -- or on the side of

Joseph Smith

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1 A Correct.

2 Q Were you-all doing that?

3 A Yes.

4 Q Okay, how far into that process were you?

5 A Not far.

6 Q And what was the next thing that happened?

7 A That's when Gary said there was a wire on

8 the stern.

9 Q And he said that on the radio, I guess?

10 A Yes.

11 Q And what happened when he said that?

12 A Buddy asked him if it was a wire or a line.

13 He said a wire. Buddy --

14 Q Now, is there a difference between a wire

15 and a line?

16 A Yes.

17 Q What's the difference?

18 A A wire would have pulled the whole fleet

19 out, possibly lost barges. It could have been -- it

20 would have been some product -- put product in the

21 water. If it had been a line, Buddy could have came

22 ahead on it, broke the line, and that would have been

23 it, just broke the line free.

Joseph Smith

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1           A       Because that's what we are supposed to do.  
2       When we holler, "Watch the bump," which was hollered --  
3       when we holler, "Watch the bump," we are supposed to  
4       secure ourselves any way possible regardless of if it's  
5       going to be a heavy bump or a light bump.

6           Q       Why did you make that announcement over --  
7       yell it instead of saying it on the radio?

8           A       That was -- that's what we're supposed to  
9       do, we are supposed to holler, "Watch the bump."

10          Q       Okay. So do you know if Gary heard you?

11          A       At this time I don't know where Gary was.

12          Q       Okay. So you don't know whether he heard  
13       you or not?

14          A       No.

15          Q       All right. But Justin did?

16          A       Yes.

17          Q       He grabbed ahold of something in the  
18       center?

19          A       Yes.

20          Q       And you grabbed the bumper and threw it  
21       over the edge?

22          A       Yes.

23          Q       And what did you do?

Joseph Smith

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1 was wrong, and I started running back there.

2 Q When you got back there, then, immediately  
3 after he had --

4 A Yes.

5 Q And what did you see?

6 A I saw -- well, first I grabbed the life  
7 ring and I saw Justin laying on his stomach.

8 Q So you took a life ring with you when you  
9 went?

10 A I grabbed the life ring as I was passing  
11 it.

12 Q All right, and the life ring was where?

13 A It was on the stern of the boat, about 15  
14 feet from the stern of the -- the very stern of the  
15 boat.

16 Q Which side?

17 A On the port side.

18 Q Okay.

19 A We have actually one on all four corners of  
20 the lower deck.

21 Q But the one you grabbed was the one on --

22 A On the stern, on the port side.

23 Q Okay. So you grabbed that on your way

Joseph Smith

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1 back, and when you get back there, what do you see?

2 A Justin laying on his stomach and holding  
3 Gary's vest, and Gary trying to climb up Justin.

4 Q All right. Was Gary facing Justin?

5 A Uh-huh.

6 Q Is that a yes?

7 A Yes. I'm sorry.

8 MR. BISER: If you need to take a break.

9 THE WITNESS: I'm fine.

10 BY MR. BISER:

11 Q And when you say he's trying to climb  
12 Justin, tell me what --

13 A He was grabbing ahold of the upper parts of  
14 Justin's shoulders.

15 Q Like reaching up --

16 A Yes.

17 Q -- trying to -- Justin is laying flat?

18 A It looked like he was using -- trying to  
19 use Justin as a ladder.

20 Q How far was it -- was Justin -- he had his  
21 arms down?

22 A Yes.

23 Q How far were Justin's arms from the water



Joseph Smith

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1 level? Was it very far?

2 A Two feet.

3 Q Two feet below his arms was the water

4 level?

5 A Yes.

6 Q So how far up out of the water was Gary?

7 A Probably -- I mean, his arms was --

8 probably about right here (indicating), shoulder.

9 Gary's arms were long enough to reach the top of the  
10 barge.

11 Q Okay. So for a point of reference, was  
12 Gary's work -- he had on a work vest?

13 A Yes.

14 Q Was his work vest under the water? Above  
15 the water?

16 A He was above the water.

17 Q Okay, completely above?

18 A Yes.

19 Q So the vest comes down to about the lower  
20 part of your chest; is that right?

21 A Yes.

22 Q So he was up out of the water that far?

23 A Yes.

Joseph Smith

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- 1 Q All right, and he was reaching for Justin?
- 2 A Yes.
- 3 Q Was he saying anything?
- 4 A "Help me."
- 5 Q Anything else you heard him say?
- 6 A He was repeating, "Help me, help me."
- 7 Q And he was looking right at Justin?
- 8 A Yes.
- 9 Q How far away from them are you at this
- 10 point?
- 11 A I am right overtop of them.
- 12 Q Are you standing above -- you are standing
- 13 up above Justin?
- 14 A The boat. No, above Gary.
- 15 Q Above Gary. Are you on the boat or on the
- 16 barge?
- 17 A I'm on the boat.
- 18 Q All right. So Gary is right at the corner
- 19 of the boat?
- 20 A Yes.
- 21 Q And the edge of the barge?
- 22 A Yes.
- 23 Q What do you do?

Joseph Smith

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- 1           A     I hand Gary the life ring.
- 2           Q     And what does Gary do with it?
- 3           A     He puts his arm through it.
- 4           Q     Now, does Justin have ahold of Gary?
- 5           A     Yes.
- 6           Q     How does -- you said he had ahold -- how
- 7     does he have ahold of him?
- 8           A     It looked like his vest.
- 9           Q     Both hands?
- 10          A     Yes.
- 11          Q     And which -- does Gary -- does Gary have
- 12     ahold of Justin?
- 13          A     He's trying.
- 14          Q     Okay. So which arm or hand does he use to
- 15     take the life vest from you?
- 16                     MR. ELLIS: Life ring.
- 17                     MR. BISER: Life ring. I'm sorry.
- 18                     THE WITNESS: I'm not sure.
- 19     BY MR. BISER:
- 20          Q     He grabs it and takes it from you, though?
- 21          A     Yes.
- 22          Q     And what does he do with it?
- 23          A     Puts his arm through it.

Joseph Smith

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1 life ring, Justin had went to go get the safety ladder.

2 Q Okay. So as you gave him the life ring,  
3 Justin went to get the ladder?

4 A Yes. I told Justin, "Go get the safety  
5 ladder."

6 Q Where was it?

7 A On the starboard stern of the boat.

8 Q Just on the other side of the boat?

9 A Yes.

10 Q So he goes and gets it, and what does he  
11 do?

12 A When Justin reaches the edge, when he's  
13 about to step over, the water -- Gary gets -- I'm sorry.  
14 Gary gets pulled under.

15 Q Okay. When you tell Justin to go get the  
16 ladder --

17 A Yes.

18 Q -- do you have ahold of Gary?

19 A I have ahold of the line.

20 Q You have ahold of the line, which Gary has  
21 got the ring through his arm?

22 A Yes.

23 Q And what are you doing?

Joseph Smith

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1           A     I am trying to pull him upriver.

2           Q     All right. How -- are you on the boat or  
3 the barge?

4           A     I'm on the barge at this time.

5           Q     Okay. So did you -- when Justin went to go  
6 get the ladder, did you climb up on the barge?

7           A     Yes.

8           Q     And so you're trying to drag him away from  
9 the boat, upriver?

10          A     Yes.

11          Q     Were you able to drag him upriver any?

12          A     Not much, but yes.

13          Q     Before -- when you handed him the life  
14 ring, how far from the end of the boat was he?

15          A     He was up against.

16          Q     He was up against the boat. And how far  
17 was he from the barge?

18          A     He was -- the barge -- the boat has a duck  
19 bill sort of to it, and it curves. He was right there  
20 in the corner.

21          Q     I'm having trouble understanding what  
22 you're telling me. If you could draw me a picture of  
23 what -- the duck bill on the boat and the barge and

Joseph Smith

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1 where Gary was in the water.

2 (Witness complies.)

3 THE WITNESS: Now, here's the boat and  
4 right here's the barge. And right here is where Gary  
5 was (indicating).

6 BY MR. BISER:

7 Q So the circle represents Gary?

8 A Yes.

9 Q And that's where he was when you came back  
10 -- or is that where he was when you handed him the life  
11 ring?

12 A That's where he was when I handed him the  
13 life ring.

14 Q Is that where he was when you came back to  
15 the stern of the boat?

16 A No.

17 Q Where was he then?

18 A Probably in this vicinity right here  
19 (indicating).

20 Q So he was a little bit upriver --

21 A When Justin had hold of him.

22 Q All right, if you would in some way, either  
23 draw a line over and say "When Justin had him," or

Joseph Smith

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1 something so we know which one is which.

2 (Witness complies.)

3 MR. BISER: So will you mark for me upriver  
4 somewhere on there so I know later which -- or show me  
5 the flow of the current or something.

6 (Witness complies.)

7 BY MR. BISER:

8 Q All right, so this drawing, we are at the  
9 stern of the boat and the water flow was flowing towards  
10 the boat?

11 A Yes.

12 Q Towards the stern of the boat. And when  
13 you get there, Justin has ahold of Gary a little bit  
14 above the stern of the boat?

15 A Yes.

16 Q And then when he gets up -- when Justin  
17 gets up to leave, Gary has the life ring around his arm  
18 and you don't have ahold of Gary at any point?

19 A No.

20 Q You just have ahold of the line?

21 A (Witness nods head up and down.)

22 Q So the current pushes him back down into  
23 that little notch?

Joseph Smith

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1           A       Between the exchange of the line and Justin  
2       letting go, that current pulled him that close to that.

3           Q       Okay. And tell me what -- so you come off  
4       the boat and you try to pull him back up in the area  
5       where he was before Justin let go of him?

6           A       Correct.

7           Q       And are you walking, crawling or lying?

8           A       Standing.

9           Q       You are standing up. Are you able to pull  
10       him out of that crevice?

11          A       Not far. Not as far as Justin had him  
12       even. Enough to get him off the corner here is where --  
13       is how far I got him out.

14          Q       After Justin left, did Gary say anything to  
15       you?

16          A       Just, "Help me."

17          Q       That's all he kept saying?

18          A       (Witness nods head up and down.)

19          Q       Is that a yes?

20          A       Yes. Sorry.

21          Q       That's all right. How long does it take  
22       Justin to get that ladder and come back?

23          A       Seconds.



Joseph Smith

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1           Q     And did he put the ladder down off the edge  
2     of the boat?

3           A     When he got there, that's when Gary went  
4     under. He dropped the ladder, stepped over, and helped  
5     me pull.

6           Q     So he stepped over onto the barge?

7           A     Yes.

8           Q     Grabbed ahold of the line?

9           A     Yes.

10          Q     And the two of you were pulling the line?

11          A     Yes.

12          Q     Now, if you would, on that drawing, place  
13     an "X" where it was that Gary went under the boat.

14                     (Witness indicates.)

15     BY MR. BISER:

16          Q     Did the line pull out, or how did he come  
17     to go under the boat?

18          A     The line pulled through our hands.

19          Q     Did you have gloves on?

20          A     Yes.

21          Q     And so the line pulled through your hands  
22     and through -- did Justin have ahold of the line at that  
23     point?

Joseph Smith

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1 happens to us is the corner will wear out. If that  
2 orange cover is exposed -- or is removed and there is  
3 foam exposed, we have to replace it.

4 MR. BISER: That's all I have.

5 MR. ELLIS: I just have a couple for you.

6 EXAMINATION

7 BY MR. ELLIS:

8 Q You said you had worked with Gary for three  
9 weeks on this trip on the Tri-State?

10 A Yes.

11 Q Did you have an opportunity to observe his  
12 work during that period of time?

13 A Yes.

14 Q Was he a competent deckhand?

15 A No.

16 Q He was not a competent deckhand?

17 A Well, what do you mean by that? Like --

18 Q Was he able to -- did he know what his job  
19 was?

20 A Yes, yes, he did, as a deckhand, he did,  
21 yes.

22 Q During that period of time had you arrived  
23 at and tied off and departed several locations?

Joseph Smith

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1           A     Yes.

2           Q     Did he always know how to free up the boat  
3     to depart?

4           A     He showed he did, yes.

5           Q     What was the standard procedure he would  
6     have been trained on for releasing the boat in the  
7     configuration of the Tri-State?

8           A     Start at the stern and work your way to the  
9     head if facing upriver. You always turn from the lower  
10    end loose.

11          Q     Do you check each fitting from the stern  
12    forward?

13          A     Yes. You start at the very, very stern  
14    end, the very lower end and work your way.

15          Q     And that was the procedure all of you were  
16    trained to perform?

17          A     Yes.

18          Q     On what fitting was that line located?

19          A     The stern breast, lower end.

20          Q     Would that have been the lowest -- or the  
21    most up -- I'm sorry, the most downriver fitting?

22          A     Yes.

23          Q     In your statement you made reference to a